IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.359 OF 2000

Appasaheb Dadasaheb Mokashi ..Appellant

Versus

Vasantrao Dadashaeb Mokashi & Ors. ..Respondents

Ms.Smita Mane i/b P.B.Shah for appellant

Mr.M.A.Utgikar for respondent

CORAM : P.V.KAKADE, J.

DATE : 23rd NOVEMBER, 2004

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl. District Judge, Pandharpur on 20.1.2000 dismissing his appeal and confirming the judgment and decree passed by Joint Civil Judge, Senior Division, Sangola dated 30.4.1994 in R.C.Suit No.133 of 1990.

2. I heard the learned counsel for the appellant. Perused the record.

. The plaintiff-Respondent filed the suit for perpetual injunction against the defendants submitting that Defendant Nos.1, 2 and 3 are real brothers of the plaintiff whereas the Respondent No.4 is sister. Some agricultural lands of family of the plaintiff and the defendants were also situated at Shetaphale and Walkhindi. In the year 1989 all the agricultural lands of the joint family were partitioned amongst plaintiff and defendants including land of Gat No.334 at village Sangewadi Tal. Sangola, which is the subject matter of the suit. The particulars of the partition were accordingly reduced into writing on Stamp Paper on 24.7.1989. the suit land was allotted to the share of the plaintiff. Since then the plaintiff and the defendants are cultivating the agricultural lands separately and independently as per the said partition. The defendant no.1 had earlier taken loan of the bank on the suit land and therefore his name was not deleted from the Revenue Record. Taking advantage of this

aspect the defendant no.1 started obstructing possession of the plaintiff in the suit property and hence the suit for perpetual injunction came to be filed.

. The Defendant no.1 resisted the suit on the ground that no partition had taken place amongst the parties. He also denied that the suit land was allotted to the share of the plaintiff and plaintiff's lawful possession was also challenged in the said suit property. Defendant No.1 contended that he was in Military Service and suit land is purchased by him out of his own income and therefore it is his self acquired property and on such other ground the suit was challenged and was sought to be dismissed with costs.

. The learned Trial Judge settled the issues and heard the suit on merits for which basis it was held that the plaintiff was in lawful possession of the suit property in his capacity as the lawful owner thereof and therefore, it was held that he was entitled to perpetual injunction as against Defendant No.1. Accordingly the suit was decreed in favour of the plaintiff. The appeal was carried to the District Court. The Addl. District Judge Pandharpur after hearing both the parties endorsed

the findings recorded by the Trial Judge holding that the plaintiff was in lawful possession of the suit land and therefore was entitled to relief of perpetual injunction as the obstruction of the plaintiff's possession was apparent on record. Consequently the appeal was dismissed and hence the present second appeal.

3. At the outset it may be noted that there is absolutely no substantial question of law is involved in this appeal. The only question of law is sought to be adjudicated on behalf of the appellant is to the effect whether the decree for perpetual injunction is to be granted against the co-sharer? However, it is clear from the evidence that there was a partition between the parties duly effected in the year 1989 and since then the plaintiff was in separate possession of his own share of the suit property and it was apparent that the defendant no.1 was trying to take advantage of the fact that his name was in the Revenue Record relating to the suit property, in view of the fact that he had earlier raised loan over the said land. It is the case of the plaintiff that initially the partitions were orally effected and thereafter those were reduced in writing

vide Exh.25 on record, which is a Partition Deed, which was held not admissible in evidence for want of registration, but could be used for co-lateral purpose, especially when other documentary evidence was in support of theory of partition effected at the foot of the document Exh.25.

. In my considered view, this view taken by both the courts below is just, legal and proper and therefore, cannot be interfered with.

4. In the case **KONDIBA DAGADU KADAM VS. SAVITRIBAI SOPAN GUJAR & ORS. AIR 1999 (3) SUPREME COURT 2213** the Apex Court has held that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. In the present case before us it is seen that both the courts below have given due weightage to the evidence on record, which is properly appreciated and therefore, would brook no interference.

5. In the result the appeal stands dismissed in limine.